



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...
CRIMINAL APPLICATION (APPA) NO. 846/2023
WITH
CRIMINAL APPEAL (ST) NO.5997/2023
WITH
CRI.APPA (ST) NO.6007/2023

Prafulla s/o Ravindra Arjune

.. Applicant

versus

The State of Maharashtra

Th: Its PS Yavatmal and another

.. Respondent/s

.....
Mr.Nalin Majithia, Advocate (appointed) for the applicant /appellant

Mr.A.R.Chutke, APP for Respondent No.1

Ms. Mitisha Kotecha, Adv.(appointed) for Respondent No.2
.....

CORAM: ANIL L. PANSARE, J.

DATED : 11th October, 2023.

PC:

CRI.APPA. 846/2023

By present application, the applicant is seeking condonation of delay of 115 days in filing the Appeal against conviction. The applicant has been convicted by the judgment and order dated 30.01.2023 passed by learned Sessions Judge, Yavatmal in Special (Child Case) No.107/2021, convicting the applicant for the offence punishable u/s 354 of the IPC and under Sections 11 and 12 of the POCSO Act, 2012 and sentencing him to suffer RI for three years.

The learned counsel for the applicant submits that the reason for delay is that the applicant was in jail at Yavatmal and due to due to financial crunch he could not engage an Advocate. The applicant then approached the Legal Services Authority seeking legal aid.

Thereafter, the Appeal came to be filed. For all these reasons, the applicant could not file the appeal in time, despite the sentence having been suspended by the trial Court.

The learned APP and learned counsel appearing for Respondent no.2 have opposed the application.

However for the reasons stated by the counsel for the applicant, the Application is allowed. The delay of 115 days caused in filing the present appeal is hereby condoned. The Appeal be registered.

CRI.APPEAL (ST) NO. 5997/2023

Heard.

Admit.

Call R & P

The R & P be furnished in hard copy as well as soft copy.

Learned APP waives service on behalf of the Respondent No.1, whereas Ms.Kotecha waives service on behalf of respondent no.2

CRI.APPA (ST) NO.6007/2023

The applicant has filed this application under section 389 of the Code of Criminal Procedure, 1973. The applicant has been convicted by the judgment and order dated 30.01.2023 passed by learned Sessions Judge, Yavatmal in Special (Child Case) No.107/2021, convicting the applicant for offence punishable u/s 354 of the IPC and Sections 11 and 12 of the POCSO Act, 2012, and sentencing him to suffer RI for three years.

It is submitted that the applicant has already paid the fine amount.

Having heard both the sides, it appears that the incident had occurred on 30th June, 2021. The victim has deposed before the Court that on that day, at 12 midnight, the accused made a phone call and the victim came out of her house. The accused caught hold of victim's hand and took her to his house and forcibly kissed her. Her parents knocked the door, however the accused did not open and, therefore, they broke open the door. In the cross-examination, this entire version is proved to be omission, except one statement that the accused had kissed her.

The learned counsel for the applicant submits and rightly so that when most part of the testimony of the victim, as regards occurrence of incident, is proved to be omission, the accused ought not to have convicted merely because one statement of her version was found to be not omission. To my mind, *prima facie*, the applicant has made out a case to revisit the entire evidence and to have a minute look at the evidence led by the prosecution.

In the circumstances, though the learned APP and learned counsel for respondent no.2 have made an attempt to support the finding rendered by the trial court, in my view, the omissions which are so many, will require a detailed scrutiny of the evidence.

The applicant was 25 years old at the time of commission of offence. The victim was aged about 13 years.

The learned counsel for the applicant submits that the applicant was on bail pending trial. He further submits that after pronouncement of the judgment, the execution of sentence of the applicant has been suspended. He further submits that there are no allegations that the applicant has misused the liberty while on bail. There are no criminal antecedents. He possesses good case on merits. Hence the order :-

ORDER :

(I) The execution of the sentence imposed upon the applicant by the judgment and order dated 30.01.2023 passed by learned Sessions Judge, Yavatmal in Special (Child Case) No.107/2021, convicting the applicant for offence punishable u/s 354 of the IPC and Sections 11 and 12 of the POCSO Act, 2012, is hereby suspended, on the following conditions :

- (i) The applicant shall be released on bail on furnishing PR bond in the sum of Rs.25,000/- with one or two solvent surety of like amount, before the lower Court.
- (ii) The applicant shall remain present before this Court at the time of final hearing of the Appeal.

[ANIL L. PANSARE, J.]